

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Mass. Electric Construction Co.)	
)	C.A. No. 09C-01-138-JOH
Plaintiff)	
)	
v.)	
)	
Siemens Building Technologies, Inc., and)	
Gerling America Insurance Co.)	
)	
Defendants)	

Submitted: October 18, 2010

Decided: October 28, 2010

ORDER

*Upon Application for a Certification of an Interlocutory Appeal by Defendant Siemens Building Technologies, Inc. – **CERTIFICATION REFUSED***

And now this 28th day of October, 2010, defendant Siemens Building Technologies, Inc., having made application pursuant to Supreme Court Rule 41 for an order certifying an appeal from an interlocutory order/opinion of this Court dated September 28, 2010, and it further appearing that:

1. Plaintiff Mass. Electric Construction Company (“Mass. Electric”) filed a declaratory judgment action against Siemens Building Technologies, Inc. (“SBT”) to have this Court find Siemens and co-defendant Gerling America Insurance Company were obligated to defend and indemnify it in a single personal injury action.

2. This Court determined under Pennsylvania law that SBT (and Gerling)¹ was required to defend Mass. Electric in the personal injury action but that the issue of indemnification was not ripe.

3. This Court's holding was premised upon standard, accepted, principles of contract law and did not involve any novel issues. The decision did not involve an interpretation of an insurance policy and its coverage.

4. SBT disagrees with this Court's ruling, claiming it established a substantial issue and determined a legal right. Inasmuch as this Court found there was a duty to defend, SBT is correct as far as that goes.

But, such determination was no more than many other pre-trial rulings in this Court. There were no unsettled questions of law which this Court resolved nor are there conflicting court opinions.

5. Mass. Electric continues to pay defense costs starting in 2008 in the personal injury action and would continue to be prejudiced with further delayed resolution of the duty to defend.

6. Accordingly, Mass. Electric opposes SBT's application for a certification of an interlocutory appeal.

7. This Court concurs. Further, an interlocutory appeal on the issue of the duty to defend and resolution in SBT's favor would not terminate the litigation. The issue of indemnification remains.

¹ Gerling has filed a separate application for an interlocutory appeal.

8. This Court, therefore, refuses to certify this matter for an interlocutory appeal.

IT IS SO ORDERED.

Judge